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No. 80-1361

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

M/G TRANSPORT SERVICES, INC. - - Petitioner

versus

CITIZENS FIDELITY BANK AND TRUST CO., Executor Under the Will of Thomas L. Shanesy,
MARY ELLEN SHANESY,
CATHERINE ANN SHANESY,
JAMES W. SHANESY, and
RAYMOND E. POTTER, SR., Administrator of the Estate of Martha Jo Kinser - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF OF PETITIONER

W. SCOTT MILLER, JR.
MILLER & MILLER
Suite 602, One Riverfront Plaza
Louisville, Kentucky 40202
(502) 589-6240
Counsel for Petitioner
M/G Transport Services, Inc.

NATHAN S. LORD
Of Counsel

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

TABLE OF AUTHORITIES

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3 I. Hall, A. Sann, K. Halajean, N. Golden, B. Chase and J. Grieder *Benedict on Admiralty* 8-122 (7th Ed. 1980) 3

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONER

Contrary to the statements made by Respondents in their Brief in Opposition, the Order docketing the case for jury trial is tantamount to an order modifying, refusing, or dissolving injunctive relief as clearly set out by the Limitation of Liability Act, 46 U.S.C. § 185. An opinion of this Court and most opinions of federal courts of appeal are in accord with Petitioner's position that such orders in limitation actions are appealable under 28 U.S.C. § 1292(a)(1).

With the timely filing of the limitation action in the United States District Court for the Western District of Kentucky, an injunction was issued by that Court enjoining "any and all suits, actions, or legal proceedings of any nature or description whatsoever except in this Petition of M/G Transport Services, Inc., a corporation, for exoneration from or limitation of liability against the M/V MARK EASTIN and against the Petitioner, M/G Transport Services".[1]

Respondents' footnote two on page two of the Brief in Opposition to the Petition for a Writ of Certiorari implies the restraining order was limited to ten days, while that restraining order is good until the termination of the exoneration or limitation proceedings; Fed. R. Civ. P. Supp. F (3); 46 U.S.C. § 185 (final sentence).

At the bottom of Page 2 of Respondents' Brief in Opposition to the Petition for Writ of Certiorari in the italicized portion of the quotation of the district court's order of July 7, 1980 appears the vice of the case below:

> *"Should the jury assess all or part of the liability against M/G, an injunction will issue enjoining plaintiffs, or any of them, from enforcing any judgment entered on the jury verdict until M/G's petition for exoneration is tried to the court."*

Exoneration IS the same issue as whether M/G is liable to Respondents, or either, for a maritime tort. If exoneration is tried to the court, as it should be in

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[1]Restraining Order fully set out in Pages 34 and 35 of the Appendix filed with the Petition for Writ of Certiorari.

a multi-claim, inadequate fund case, there is nothing for a jury to do.

Petitioner seeks relief in this court in order to bring the foregoing issue before the Sixth Circuit. When the district court made that order, it nullified the statutory command, 46 U.S.C. § 185, that the wrongful death actions "shall cease".

An admiralty court has always had the power to stay its hand while parties proceed to arbitration without the need for a party to ask a court of equity for a stay of the admiralty proceedings. The courts of appeals cases cited on page four of the Brief in Opposition to the Petition for Writ of Certiorari so indicate. *Penoro* v. *Rederi A/G Disa,* 376 F. 2d 125 (2nd Cir.) *cert. denied,* 389 U. S. 852 (1967); *W. R. Grace & Co.* v. *Trawler Crustamar,* 571 F. 2d 318 (5th Cir. 1978); *Tradax Limited* v. *M/V Holendrecht,* 550 F. 2d 1337 (2nd Cir. 1977); *United States* v. *Chelsea Towers, Inc.,* 404 F. 2d 329 (3rd Cir. 1968).

None of the cases cited by Respondents, except *Emerick* v. *Lambert,* 187 F. 2d 786 (6th Cir. 1951), hold that orders modifying exoneration or limitation proceedings are not appealable under 28 U.S.C. § 1292(a)(1).

3 I. Hall, A. Sann, K. Halajran, N. Golden, B. Chase and J. Grieder *Benedict on Admiralty* 8-122 (7th Ed. 1980) states (footnote 9 citing ten cases including *Lake Tankers Corp.* v. *Henn,* 354 U. S. 147 (1957) is omitted):

"An order refusing to modify, dissolve or dismiss a restraining order or allowing such modification, dissolution or dismissal of the limitation injunction is appealable under 28 U.S.C. § 1292(a)(1)."

Respectfully submitted,

W. SCOTT MILLER, JR.
MILLER & MILLER
Suite 602, One Riverfront Plaza
Louisville, Kentucky 40202
(502) 589-6240

Counsel for Petitioner,
M/G Transport Services, Inc.

NATHAN S. LORD
Of Counsel